

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ludi Education Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for :
the Year ending 10/31/71. :

State of New York
County of Albany

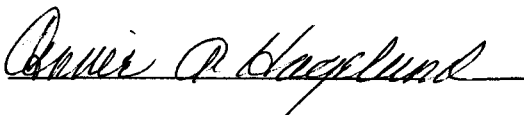
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of December, 1981, he served the within notice of Decision by certified mail upon Ludi Education Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

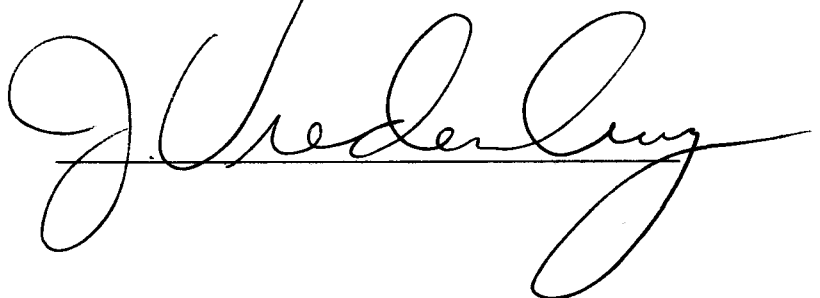
Ludi Education Corp.
47 W. 13th St.
New York, NY 10011

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of December, 1981.


Daniel P. Haglund


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ludi Education Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Franchise Tax under Article 9-A of the Tax Law :
for the Year ending 10/31/71.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of December, 1981, he served the within notice of Decision by certified mail upon Richard L. Gold the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard L. Gold
Bandler & Kass
605 Third Ave.
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
11th day of December, 1981.

Annie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 11, 1981

Ludi Education Corp.
47 W. 13th St.
New York, NY 10011

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard L. Gold
Bandler & Kass
605 Third Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LUDI EDUCATION CORP.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Year Ending	:	
October 31, 1971.	:	

Petitioner, Ludi Education Corp. 47 West 13th Street, New York, New York, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the year ending October 31, 1971 (File No. 20699).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 8, 1981. Petitioner appeared by Bandler & Kass (Richard L. Gold, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the petitioner was correct in filing a combined franchise tax return with its parent corporation.

FINDINGS OF FACT

1. A Statement of Audit Changes was issued on April 15, 1974 against petitioner for Franchise Tax on Business Corporations under Article 9-A of the Tax Law for the fiscal year ended October 31, 1971. This is in the amount of \$2,866.00. Said amount was arrived at by computing the tax on taxable income

of \$34,466.00 to be \$2,987.00 and giving credit for \$121.00 previously paid by petitioner on a combined franchise tax return with Educational Design, Inc.

2. Ludi Education Corp. ("Ludi") is a New York corporation organized in 1963 located at 47 West 13th Street, New York, New York. All of its issued and outstanding stock prior to 1970 was owned by Stuart Margolis of 135 Beaumont Street, Brooklyn, New York.

3. The business of Ludi was to develop educational products for others to publish and to receive royalties for said products. These products constituted reading materials and cassettes in the area of reading and verbal arts. Ludi would design the product and contract the writing to free-lance writers.

4. As of November 1, 1970, the primary source of royalty income of Ludi was the New Century Education Corporation, a successor corporation to Appleton-Century Crafts, Inc. A secondary source of royalty income of Ludi was Educational Resources, Inc., a wholly-owned subsidiary of Educational Design, Inc.

5. By an agreement dated November 1, 1970, all of the issued and outstanding shares of Ludi were sold by Mr. Margolis to Educational Design, Inc. also of 47 West 13th Street, New York, New York. The sales price consisted of a "fixed payment" payable in installments over four years, plus a contingent payment equal to two-thirds of the revenues (with adjustments) received from the educational materials previously developed by Ludi. As security for the purchase price, Ludi assigned to Margolis a security interest in all receipts from the Ludi materials and such receipts were assigned to an escrow agent to insure performance of the contract.

6. The business of Educational Design, Inc. was primarily to develop educational products for publication by others. It also would publish and market educational products developed by itself or by others (including two

products developed prior to 1970 by Ludi Education Corp.). It also marketed a line of science toys and published a line of audio-visual products for sale to schools.

7. Subsequent to 1970, Educational Design used the name and good will of Ludi. Contracts would be entered into with customers, particularly New Century Education Corporation, for the development of educational products in the name of Ludi which were performed by Educational Design.

8. Ludi and Educational Design shared the same office space. The officers and employees of Educational Design would work on the contracts of both Ludi and Educational Design. Educational Design incurred expenses on behalf of Ludi for the office space and salaries as well as for professional fees, interest and bank charges, insurance, taxes and miscellaneous items.

CONCLUSIONS OF LAW

A. That section 211, subdivision 4 of the Tax Law provides that the State Tax Commission in its discretion "may be required or permitted to make a report on a combined basis".

B. That petitioner qualifies for the filing of a combined franchise tax return. Prior to 1976 and during the year in question, the State Tax Commission provided by regulation (20 NYCRR 5.28(b) as follows:

"In determining whether, in a case where the test of stock ownership or control is met, the tax will be computed on the basis of a combined report, the State Tax Commission will consider various factors, including the following: (1) whether the corporations are engaged in the same or related lines of business; (2) whether any of the corporations are in substance merely departments of a unitary business conducted by the entire group; (3) whether the products of any of the corporations are sold to or used by any of the other corporations; (4) whether any of the corporations perform services for, or lend money to, or otherwise finance or assist in the operations of, any of the other corporations; (5) whether there are other substantial intercompany transactions among the constituent corporations."

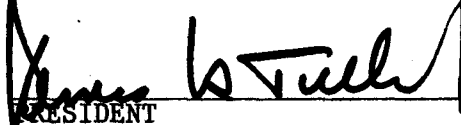
In this case the two corporations, Ludi Education Corp., petitioner herein, and Educational Design, Inc., its parent, are engaged in the same or related lines of business in that they both design educational products for publications by others; in fact, Ludi is in substance operated as merely a department of Educational Design; Educational Design, in effect, provides its personnel to work on Ludi contracts and Ludi's receipts are used by Educational (without the declaration of a dividend from Ludi to Educational) to pay the debts of Educational to Ludi's former shareholder, Mr. Margolis; some of the past sales of Ludi, for which receipts are or will be due were made to Educational Design.

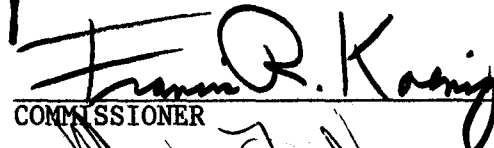
C. That the determination under review is cancelled.

DATED: Albany, New York

DEC 11 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER